



June 2, 2000

Mr. Jeffrey L. Schrader
Assistant Criminal District Attorney
Civil Section
Bexar County
300 Dolorosa, Fifth Floor
San Antonio, Texas 78205-3030

OR2000-2184

Dear Mr. Schrader:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135770.

The Bexar County Department of Housing and Human Services (the "department") received a request for a copy of the "Ryan White Title I Fiscal Year 2000-2001 proposals (with reviewers scoring and comments) of the San Antonio AIDS Foundation [("SAAF")], the University Health System [("UHS")], El Centro del Barrio [("ECDB")], and the South Texas Veterans Health Care System[("STVHCS")." Pursuant to section 552.305 of the Government Code, you notified the above-named entities of the department's receipt of the request for information. You make no arguments regarding the proprietary nature of the third-parties' information. However, you do assert that certain portions of the requested information are excepted from disclosure under sections 552.101, 552.117 and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

Pursuant to section 552.305 of the Government Code, you notified SAAF, UHS, ECDB, and STVHCS of the request for information. Each third party had the opportunity to submit to our office within ten business days after receiving the department's notice the reason or reasons why the information should be withheld and a letter, memorandum, or brief in support of the proffered reasons. Gov't Code § 552.305(b); Open Records Decision No. 542 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permits governmental body to rely on interested third party to raise and explain applicability of exception in Public Information Act in certain circumstances). To date, we have not received any correspondence from any of the third parties. Consequently, we have no basis to conclude that the submitted information is excepted from disclosure based on an exception

that would protect the third parties' proprietary interests. *See* Gov't Code § 552.110(b) (to prevent disclosure of commercial or financial information, party must show by specific factual or evidentiary material, not conclusory or generalized allegations, that it actually faces competition and that substantial competitive injury would likely result from disclosure); Open Records Decision Nos. 552 at 5 (1990) (party must establish prima facie case that information is trade secret), 542 at 3 (1990). Therefore, the department may not withhold from disclosure the submitted information as confidential proprietary information.

You claim that certain information is excepted from disclosure under section 552.130 of the Government Code. Section 552.130 excepts information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold from disclosure the driver's licenses contained in the submitted information. We have supplemented your markings by indicating additional information which you must withhold under section 552.130.

Section 552.117 of the Government Code excepts from public disclosure information relating to the home address, home telephone number, and social security number of a current or former government employee or official, as well as information revealing whether the employee or officials has family members when the public employee requests that this information be kept confidential under section 552.024. This section, by its terms, does not apply to anyone but current or former government employees or officials. *See, e.g.*, Open Records Decision No. 455 (1987) (section 552.117 does not apply to applicants). The submitted information indicates that SAAF and ECDB are non-profit corporations. Likewise, STVHCS is operated by the Veteran's Administration. However, we have discerned from the submitted information that each of these entities is supported, in whole or in part, by public funding.¹ Consequently, these entities may be considered to be governmental bodies for purposes of the Public Information Act. *See* Gov't Code § 552.003(1)(A)(x). To the extent that ECDB, SAAF and STVHCS are governmental bodies, section 552.117 requires the department to withhold personal information of a current or former employee or official who requested that this information be kept confidential under section 552.024. *See* Open Records Decision Nos. 622 (1994), 455 (1987). The fourth entity, UHS, is a governmental body for purposes of the Act. *See* Gov't Code § 552.003(1)(A)(i). You must withhold, pursuant to section 552.117 of the Government Code, the personal information related to UHS employees who requested that this information be kept confidential under section 552.024. *See* Open Records Decision

¹ECDB's letterhead indicates that the entity is supported, in part, by funding from the City of San Antonio. Similarly, SAAF's financial statements show receipt of contributions and grants from public entities, and grants from state agencies. Finally, STVHCS has received financial support from the Bexar County Ryan White Title I program.

Nos. 622 (1994), 455 (1987). You may not, however, withhold the information of a current or former employee of any of the four entities who made the request for confidentiality under section 552.024 after this request for information was made. Whether a particular piece of information is public must be determined at the time the request for it is made. Open Records Decision No. 530 at 5 (1989). For your convenience, we have marked in the information submitted to the department by UHS the type of information that is excepted from disclosure under section 552.117.

To the extent that an employee of SAAF, ECDB, STVHCS, and UHS did not, prior to the department's receipt of the request for information, make the section 552.024 election to keep his or her section 552.117 information confidential, the employee's social security number may nevertheless be confidential under federal law. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). See Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. See *id.* We have no basis for concluding that any of the social security numbers in the file are confidential under section 405(c)(2)(C)(viii)(I), and, therefore, excepted from public disclosure under section 552.101 of the Public Information Act on the basis of that federal provision. We caution, however, that section 552.353 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing any social security number information, you should ensure that no such information was obtained or is maintained by department pursuant to any provision of law enacted on or after October 1, 1990.

We note that the submitted information contains federal tax identification numbers which are excepted from disclosure. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 552.101 encompasses information made confidential by other statutes. Prior decisions of this office have held that title 26, section 6103(a) of the United States Code renders tax return information confidential. Attorney General Opinion H-1274 (1978) (tax returns); Open Records Decision Nos. 600 (1992) (W-4 forms), 226 (1979) (W-2 forms). Generally, any information gathered by the Internal Revenue Service regarding a taxpayer's liability under title 26 of the United States Code is confidential. *Mallas v. Kolak*, 721 F. Supp. 748 (M.D.N.C. 1989); *Dowd v. Calabrese*, 101 F.R.D. 427 (D.C. 1984). For your convenience, we have marked the information which the department must withhold from disclosure under section 552.101 as information deemed confidential by federal statute.

Section 552.101 also encompasses both common law and constitutional privacy. Common law privacy excepts from disclosure private facts about an individual. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

Therefore, information may be withheld from the public when (1) it is highly intimate and embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. *Id.* at 685; Open Records Decision No. 611 at 1 (1992).

The constitutional right to privacy protects two interests. Open Records Decision No. 600 at 4 (1992) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)). The first is the interest in independence in making certain important decisions related to the “zones of privacy” recognized by the United States Supreme Court. Open Records Decision No. 600 at 4 (1992). The zones of privacy recognized by the United States Supreme Court are matters pertaining to marriage, procreation, contraception, family relationships, child rearing and education. *See id.* The second interest is the interest in avoiding disclosure of personal matters. The test for whether information may be publicly disclosed without violating constitutional privacy rights involves a balancing of the individual’s privacy interests against the public’s need to know information of public concern. *See* Open Records Decision No. 455 at 5-7 (1987) (citing *Fadjo v. Coon*, 633 F.2d 1172, 1176 (5th Cir. 1981)). The scope of information considered private under the constitutional doctrine is far narrower than that under the common law; the material must concern the “most intimate aspects of human affairs.” *See* Open Records Decision No. 455 at 5 (1987) (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985), *cert. denied*, 474 U.S. 1062 (1986)).

This office has found that the following types of information are excepted from required public disclosure under constitutional or common law privacy: some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps), personal financial information not relating to the financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990), 396 (1983) (financial records of inmates), and information concerning the intimate relations between individuals and their family members, *see* Open Records Decision No. 470 (1987). *See also* Health and Safety Code § 81.103 (making certain test result information confidential); Open Records Decision No. 339 (1982) (sexual assault victim has common law privacy interest which prevents disclosure of information that would identify them). We have reviewed the submitted documents and have marked the information that must be withheld under constitutional or common law privacy.²

²We note that individuals have consented to the release of certain information for the limited purpose of using the information for the proposal process. We do not believe that such consent acts as a waiver of the individuals’ common law or constitutional rights to privacy.

To summarize, you may not withhold the submitted information to protect the property interests of the involved third parties. We have marked information which must be withheld under section 552.101 in conjunction with common law or constitutional rights to privacy. To the extent that they receive public funding, ECDB, SAAF and STVHCS may be governmental bodies for purposes of the Public Information Act. UHS is, by definition, a governmental body. Therefore, to the extent that these entities are governmental bodies, you must withhold from disclosure under section 552.117 certain employee information if the employee elected prior to the date the department received the request for information to have the information withheld from disclosure. Social security numbers may be confidential under federal law if the department collected or maintained the numbers pursuant to a law enacted on or before October 1, 1990. We have supplemented your markings to indicate information which must be withheld under section 552.130 of the Government Code. Any information not addressed by the above exceptions to disclosure must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.–Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Carla Gay Dickson
Assistant Attorney General
Open Records Division

CGD/nc

Ref: ID# 135770

Encl. Submitted documents

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